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10 *Attorneys for Defendant*  
11 Robert Sillen, individually and  
12 as Receiver  
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

MEDICAL DEVELOPMENT  
INTERNATIONAL, a Delaware corporation,

Case No.

*Plaintiff,*

**NOTICE OF REMOVAL OF ACTION:  
UNDER 28 U.S.C. §1442(a)(1),(3)**

v.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION,  
ROBERT SILLEN, individually and as  
Receiver,

*Defendants.*

TO THE CLERK OF THE COURT:

PLEASE TAKE NOTICE that defendant Robert Sillen hereby removes to this Court the state court action described below.

1. On September 17, 2007 an action was commenced in the Superior Court of the State of California in and for the County of Sacramento, entitled *Medical Development International, a Delaware corporation, Plaintiff v. California Department of Corrections and Rehabilitation, Robert Sillen, individually and as Receiver, and Does 1-, Defendants,* Case No. 07AS0456. A true and correct copy of the complaint in the above matter is

- 1 attached hereto as Exhibit A. A true and correct copy of the summons is attached hereto  
 2 as Exhibit B. The remainder of the State court file is attached as Exhibit C.
- 3 2. The first date upon which defendant received a copy of the complaint was on or about  
 4 September 20, 2007, when defendant obtained a copy of the summons and complaint by  
 5 facsimile transmission from attorneys for plaintiff.
- 6 3. **Jurisdiction In This Court.** This action is a civil action which may be removed  
 7 pursuant to the provisions of 28 U.S.C. §1442(a)(1), (3) in that (i) Sillen is the Receiver  
 8 of the California prison medical care system, appointed by the Hon. Thelton E.  
 9 Henderson, U.S. District Judge, on February 14, 2006, in *Plata, et al. v. Schwarzenegger*,  
 10 *et al.*, U.S. Dist. Ct., (N.D.Cal.) No. C01-1391 TEH; (ii) as Receiver, Sillen is an officer  
 11 and agent of the *Plata* court; and, (iii) the acts Sillen is alleged to have committed were  
 12 undertaken “under color of office or in the performance of his duties” for which he has  
 13 absolute immunity as a matter of federal law and pursuant to the order appointing him.  
 14 *Ely Valley Mines, Inc. v. Hartford Acc. & Indem. Co.*, 644 F.2d 1310, 1313-1316 (9<sup>th</sup> Cir.  
 15 1981).
- 16 4. The Receiver has an independent basis upon which to remove, and therefore consent to  
 17 removal from the other defendants is unnecessary. *Id.* at 1314-1316; *see also Durham v.*  
 18 *Lockheed Martin Corp.*, 445 F.3d 1247, 1252-1253 (9<sup>th</sup> Cir. 2006); *Akin v. United States*,  
 19 156 F.3d 1030, 1034-1035 (10<sup>th</sup> Cir. 1998); *Ortiz v. General Motors Accept. Corp.*, 583  
 20 F.Supp. 526, 530 (N.D. Ill. 1984).

21  
 22 Dated: October 16, 2007

FUTTERMAN & DUPREE LLP

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 24 By: \_\_\_\_\_ /s/  
 25 Martin H. Dodd  
 26 Attorneys for Defendant Robert Sillen  
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 28

## CERTIFICATE OF SERVICE

The undersigned hereby certifies as follows:

I am an employee of the law firm of Futterman & Dupree LLP, 160 Sansome Street, 17<sup>th</sup> Floor, San Francisco, CA 94104. I am over the age of 18 and not a party to the within action.

I am readily familiar with the business practice of Futterman & Dupree, LLP for the collection and processing of correspondence.

On October 16, 2007, I served a copy of the following document(s):

**NOTICE OF REMOVAL OF ACTION: UNDER 28 U.S.C. §1442(a)(1),(3)**

9 by placing true copies thereof enclosed in sealed envelopes, for collection and service pursuant to  
10 the ordinary business practice of this office in the manner and/or manners described below to  
11 each of the parties herein and addressed as follows:

**12** \_\_\_\_\_ BY HAND DELIVERY: I caused such envelope(s) to be served by hand to the address(es) designated below.

13 X BY MAIL: I caused such envelope(s) to be deposited in the mail at my business address,  
14 addressed to the addressee(s) designated. I am readily familiar with Futterman &  
15 Dupree's practice for collection and processing of correspondence and pleadings for  
mailing. It is deposited with the United States Postal Service on that same day in the  
ordinary course of business.

18 \_\_\_\_\_ BY OVERNIGHT COURIER SERVICE: I caused such envelope(s) to be delivered via  
17 overnight courier service to the addressee(s) designated.

**18** \_\_\_\_\_ BY FACSIMILE: I caused said document(s) to be transmitted to the telephone number(s) of the addressee(s) designated.

20 Bennett J. Lee  
21 Garrett E. Dillon  
22 David R. Chamberlin  
Watt, Tieder, Hoffar & Fitzgerald, LLP  
23 Citigroup Center  
One Sansome Street, Suite 1050  
San Francisco, CA 94104

**25** | Dated: October 16, 2007

Lori Dotson